

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Promoting Telehealth and)	WC Docket No. 17-310
Telemedicine in Rural America)	

**TeleQuality Communications, LLC
Request for Waiver**

Pursuant to 47 C.F.R. § 1.3, TeleQuality Communications, LLC (“TeleQuality”) hereby requests, solely for past funding year requests, a waiver of 47 C.F.R. § 54.602, and any other provision of the Rural Healthcare Telecommunications Program rules that would otherwise require TeleQuality to invoice its rural healthcare provider customers for a revised urban rate that was higher than the originally submitted urban rate. TeleQuality conducted a review of the urban rates that it provided to Health Care Providers (“HCPs”) for submission to USAC, and in some cases discovered errors that required correcting the urban rate to a higher amount. In those instances, consistent with the Commission’s recovery rules that specify recovery from the party at fault, TeleQuality seeks to bear that differential itself, rather than imposing it on its HCP customers.

I. Background

In the ordinary course, TeleQuality provides its Telecom Program customers with information on the applicable urban rate to guide HCPs as they complete their funding requests. TeleQuality did so with respect to Funding Year 2017 (“FY2017”) requests.

For FY2017, TeleQuality then received a number of requests from USAC for additional information with respect to requests from HCPs for which TeleQuality was the service provider

under the Telecom Program. In response to these requests, and as it was reviewing information in preparation for its HCP customer submissions for Funding Year 2018, TeleQuality reviewed all the urban rates that it had submitted for Funding Year 2017. While some of its urban rates did not change, others increased. This waiver request addresses only those requests for which the urban rate increased. TeleQuality has resubmitted its revised urban rates to USAC for Funding Year 2017.

II. Discussion

TeleQuality requests that the Commission grant a waiver of the requirement that Telecom Program HCPs are the only entity permitted to pay any portion of the urban rate even when that rate is retroactively adjusted upwards through no fault of the HCP. Under 47 C.F.R. § 1.3, “[a]ny provision of the rules may be waived by the Commission ... on petition if good cause therefor is shown.” In *Northeast Cellular Telephone Co. v. FCC*, the D.C. Circuit explained that good cause exists where “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹ In other words, the Commission “has authority ... to waive requirements not mandated by statute where strict compliance would not be in the public interest[.]”² In addition, “the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”³

Grant of TeleQuality’s waiver request is in accord with the Commission’s prior orders and rule applications and serves the public interest because it recovers Universal Service Fund (“USF”) overpayments while correctly placing the payment obligation on the responsible party.

¹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

² *Nat’l Ass’n of Broadcasters v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009).

³ *Connect Am. Fund*, Order, WC Docket No. 10-90, WC Docket No. 14-93, DA 18-999, 6 ¶ 21 n.43 (rel. Sept. 28, 2018) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)); *Northeast Cellular*, 897 F.2d at 1166).

The Commission has adopted a regime that requires USAC to determine the at-fault party and recover the funds from that party rather than the innocent party.⁴ This approach places the recovery obligation on “the party in the best position to ensure compliance with the statute and ... [the Commission’s] support mechanism rules.”⁵ Targeting the at-fault party aims to “place sufficient incentive[s] ... to ensure compliance,” resulting in “greater accountability and care.”⁶ Furthermore, the Commission believed seeking recovery exclusively from a party where they may be “totally unaware of any violation” would be “both unrealistic and inequitable.”⁷ The Commission reconfirmed this approach when it adopted rules for the Healthcare Connect Fund providing that, “consistent with the 2007 Program Management Order,” recovery “will be directed at the party or parties (including both beneficiaries and vendors) who have committed the statutory or rule violation.”⁸

Here, to the extent that support has already been distributed for a request which TeleQuality has identified as containing a previously submitted urban rate that was too low, the situation is exactly as contemplated in these orders – the recovery of improperly paid support.

⁴ See *Comprehensive Review of the Universal Serv. Fund Mgmt.*, Report and Order, 22 FCC Rcd. 16,372, 16,386 ¶ 30 (2007) (ordering that all improper payments must be recovered “[c]onsistent with our conclusion regarding the schools and libraries program”); see also *Fed.-State Joint Bd. on Universal Serv.*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd. 15,252 (2004) (*Fourth Order*); *Requests for Review of Decisions of the Universal Serv. Administrator by Hospital Networks Management, Inc., Verizon Business Services; Rural Health Care Universal Serv. Support Mechanism*, Order, 31 FCC Rcd 5732 ¶¶ 2, 22 (Wireline Comp. Bur. 2016) (directing USAC to seek recovery from the party at fault).

⁵ *Fourth Order* at 15,256 ¶ 11.

⁶ *Fourth Order* at 15,256 ¶ 13.

⁷ *Fourth Order* at 15,256 ¶ 12.

⁸ *Rural Health Care Support Mechanism*, Report and Order, 27 FCC Rcd. 16,678, 16,813–14 ¶ 339 (2012).

As such, the recovery should be directed to the party responsible for the overpayment, which is TeleQuality, rather than the HCP, which simply utilized the information TeleQuality provided.

Further, the Commission should apply the same principle where the funding has not yet been disbursed. In those situations, there is still the equitable issue of which party should be responsible for the additional charges. Where support has not yet been distributed and the HCP was unaware of the issue at the time it received service, it is just as “unrealistic and inequitable” to require HCPs to pay to TeleQuality for the higher urban rate as when support was already disbursed.⁹

It is also important to note that this waiver is limited to past funding requests. As such, there is no way now that this waiver could affect the amount of service that an HCP chooses to purchase, or otherwise influence program demand. Because this is a one-time waiver, it also does not affect future purchasing decisions by HCPs.

Finally, this waiver is not precluded by 47 U.S.C. § 254(h)(1)(A). That section limits support to the differential between the urban rate and the rural rate. That will still be the amount of support disbursed. The waiver will allow TeleQuality to charge the HCP less than the full urban rate, but only because TeleQuality erred initially in advising the HCP as to the correct urban rate.

III. Conclusion

Because there is good cause to grant the waiver, TeleQuality respectfully requests that, with respect to only those past funding requests for which the urban rate increased, the Commission grant a waiver of 47 C.F.R. § 54.602, and any other provision of the Rural Healthcare Telecommunications Program rules that would otherwise require TeleQuality to

⁹ *Fourth Order* at 15,256 ¶ 12.

invoice its rural healthcare provider customers for a revised urban rate that was higher than the originally submitted urban rate. TeleQuality further requests that the Commission direct USAC to allow TeleQuality to pay the difference between the incorrectly calculated urban rate and retroactively adjusted urban rate, consistent with Commission recovery rules.

Respectfully submitted,



Gina Spade
Broadband Legal Strategies
1629 K Street, NW Suite 300
Washington, DC
gina@broadbandlegal.com
202-907-6252

Counsel for TeleQuality Communications, LLC

December 6, 2018